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CONSIDERATIONS

ON THE

N A T U R E

AND THE

E X T E N T

OF THE

LEGISLATIVE AUTHORITY

OF THE

*K* B R I T I S H

*Gr. Britain*  
P A R L I A M E N T.

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## ADVERTISEMENT.

**T**HE following sheets were written during the late Non-Importation Agreement : But that Agreement being dissolved before they were ready for the Press, it was then judged unseasonable to publish them. Many will, perhaps, be surprised to see the Legislative Authority of the British Parliament over the Colonies denied in every instance. Those the writer informs, that, when he began this piece, he would probably have been surprised at such an opinion himself ; for, that it was the result, and not the occasion, of his disquisitions. He entered upon them with a view and expectation of being able to trace some constitutional Line between those cases, in which we ought, and those in which we ought not, to acknowledge the power of Parliament over us. In the prosecution of his enquiries, he became fully convinced, that such a Line does not exist ; and that there can be no medium between acknowledging and denying that power in all cases. Which of these two alternatives is most consistent with Law, with the principles of Liberty, and with the happiness of the Colonies, let the  
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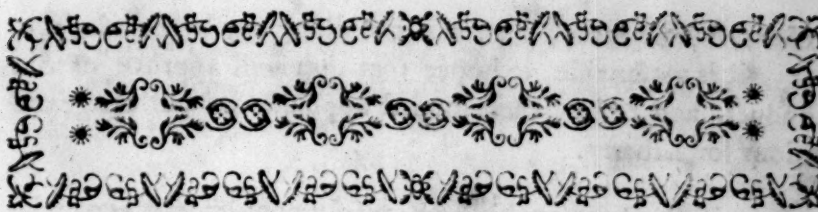
*public determine. To them the writer submits his sentiments, with that respectful deference to their judgment, which, in all questions affecting them, every individual should pay.*

AUGUST 17, 1774.



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## CONSIDERATIONS, &c.

**N**O question can be more important to Great-Britain, and to the Colonies, than this—*Does the legislative authority of the British Parliament extend over them?*

ON the resolution of this question, and on the measures which a resolution of it will direct, will depend, whether the Parent Country, like a happy Mother, shall behold her Children flourishing around her, and receive the most grateful returns for her protection and love; or whether, like a step-dame, rendered miserable by her own unkind conduct, she shall see their affections alienated, and herself deprived of those advances, which a milder treatment would have ensured to her.

THE British nation are generous: They love to enjoy freedom: They love to behold it: Slavery is their greatest abhorrence: Is it possible then, that they would wish themselves the authors of it? No. Oppression is not a plant of the British soil; and the late severe proceedings against the Colonies must have arisen from the detestable schemes of interested Ministers, who have misinformed and misled the people. A regard for that nation, from whom we have sprung, and from whom we boast to have derived the spirit, which prompts us to oppose their unfriendly measures, must lead us to put this construction on what we have lately seen and experienced. When therefore, they shall know and consider the justice of our claim—that we insist only upon being treated as Freemen, and as the Descendants of those British ancestors,

cestors, whose memory we will not dishonour by our degeneracy, it is reasonable to hope, that they will approve of our conduct, and bestow their loudest applauses on our congenial ardour for Liberty.

BUT if these reasonable and joyful hopes should fatally be disappointed, it will afford us at least some satisfaction to know, that the principles on which we have founded our opposition to the late Acts of Parliament, are the principles of justice and freedom, and of the British constitution. If our righteous struggle shall be attended with misfortunes, we will reflect with exultation on the noble cause of them; and while suffering unmerited distress, think ourselves superior to the proudest slaves. On the contrary, if we shall be re-instated in the enjoyment of those rights, to which we are entitled by the supreme and controulable laws of nature, and the fundamental principles of the British constitution, we shall reap the glorious fruit of our labours; and we shall, at the same time, give to the world, and to posterity, an instructive example, that the cause of liberty ought not to be despaired of, and that a generous contention in that cause is not always unattended with success.

THE foregoing Considerations have induced me to publish a few remarks on the important question, with which I introduced this Essay.

THOSE who allege that the Parliament of Great Britain have power to make Laws binding the American Colonies, reason in the following manner: " That there is and must  
" be in every state a supreme, irresistible, absolute, uncon-  
" trouled authority, in which the *jura summi imperii*, or the  
" rights of sovereignty reside:" \* " That this supreme pow-  
" er, is, by the Constitution of Great-Britain, vested in the  
" King, Lords, and Commons:" † " That, therefore, the  
" Acts of the King, Lords, and Commons, or, in other  
" words, Acts of Parliament, have, by the British Constitu-  
" tion, a binding Force on the American Colonies, they  
" composing a part of the British Empire."

I ADMIT

\* Blackstone, 48, 49.

† Ibid. 50, 51.

I ADMIT that the principle, on which this argument is founded, is of great importance: Its importance, however, is derived from its tendency to promote the ultimate end of all government. But if the application of it would, in *any* instance, destroy, instead of promoting that end, it ought, in *that* instance to be rejected: For to admit it, would be to sacrifice the end to the means, which are valuable only so far as they advance it.

ALL men are, by nature, equal and free: No one has a right to any authority over another without his consent: All lawful government is founded on the consent of those, who are subject to it: Such consent was given with a view to ensure and to encrease the happiness of the governed above what they could enjoy in an independant and unconnected state of nature. The consequence is, that the happiness of the society is the FIRST law of every government.\*

THIS rule is founded on the law of nature: It must control every political maxim: it must regulate the Legislature itself. || The people have a right to insist that this rule be served; and are entitled to demand a moral security that the Legislature will observe it. If they have not the first, they are slaves; if they have not the second, they are, every moment, exposed to slavery. For "civil liberty is nothing else  
"but natural liberty, divested of that part which constituted  
"the independance of individuals by the authority which it  
"confers on sovereigns, attended with a right of insisting  
"upon their making a good use of their authority, and with  
"a moral security that this right will have its effect." †

LET me now be permitted to ask—Will it ensure and encrease the happiness of the American Colonies, that the Parliament of Great-Britain should possess a supreme irresistible uncontrolled authority over them?—Is such an authority  
consistent

\* The right of sovereignty is that of commanding finally—but in order to procure real felicity; for if this end is not obtained, sovereignty ceases to be a legitimate authority. BURL. 31.

|| The law of nature is superior in obligation to any other. BLACKSTONE 41.

† BURLAMAQUI.



consistent with their liberty? Have they any security that it will be employed only for their good. Such a security is absolutely necessary. Parliaments are not infallible: They are not always just. The members, of whom they are composed, are human; and, therefore, they may err: They are influenced by interest; and, therefore, they may deviate from their duty. The acts of the body must depend upon the opinions and dispositions of the members: The acts of the body may, then, be the result of error, and of vice. It is no breach of decency to suppose all this: The British Constitution supposes it: "It supposes that Parliaments may betray their trust, and provides, as far as human wisdom can provide, that they may not be able to do so long, without a sufficient control."\* Without provisions for this purpose, the temple of British liberty, like a structure of ice, would instantly dissolve before the fire of oppression and despotic sway.

It will be very material to consider the several securities, which the inhabitants of Great-Britain have, that their liberty will not be destroyed by the legislature, in whose hands it is entrusted. If it shall appear, that the same securities are not enjoyed by the Colonists; the undeniable consequence will be, that the Colonists are not under the same obligations to entrust their liberties into the hands of the same legislature: For the Colonists are entitled to *all* § the privileges of Britons. We have committed no crimes to forfeit them: We have too much spirit to resign them. We will leave our posterity as free as our ancestors left us.

To give to any thing that passeth in Parliament the force of a law, the consent of the King, of the Lords, and of the Commons † is absolutely necessary ‡. If, then, the inhabitants of Great Britain possess a sufficient restraint upon

*any*

\* Dissert. on parties. Let. 11. 12.

§ As the law is the birthright of every subject, so wheresoever they go, they carry their laws with them. 2. WILLIAM'S reports. 75.

† The Commons of England have a great and considerable right in the Government; and a share in the Legislature without whom no law pass. Lord RAYMOND'S reports. 950.

‡ 4. Institute. 25.

*any* of these branches of the legislature, their liberty is secure, provided they be not wanting to themselves. Let us take a view of the restraints, which they have upon the *House of Commons*.

THEY elect the members of that House. "Magistrates, says Montisquieu, are properly theirs, who have the nomination of them." The members of the House of Commons, therefore, elected by the people, are the magistrates of the people; and are bound, by the ties of gratitude for the honour and confidence conferred upon them, to consult the interest of their constituents.

THE power of elections has ever been regarded as a point of the last consequence to all || free governments. The independant exercise of that power is justly deemed the strongest bulwark of the British liberties ¶. As such, it has always been an object of great attention to the legislature; and is expressly stipulated with the Prince in the Bill of Rights. All those are excluded from voting, whose poverty is such, that they cannot live independant, and must therefore be subject to the undue influence of their superiors. Such are supposed to have no will of their own; and it is judged improper that they should vote in the representation of a free state. What can exhibit, in a more striking point of view the peculiar care which has been taken, in order to render the election of members of parliament entirely free? It was deemed an insult upon the independant Commons of England, that their uninfluenced suffrages should be adulterated by those, who were not at liberty to speak as they thought, though their interests and inclinations were the same. British liberty, it was thought, could not be effectually secured, unless those who made the laws were freely, and without in-

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fluence

|| The Athenians, justly jealous of this important privilege, punished, with death, every stranger who presumed to interfere in the Assemblies of the people.

¶ The English freedom will be at an end whenever the Court invades the free Election of Parliaments. RA:PN.

A right that a man has to give his vote at the election of a person to represent him in Parliament, there to concur to the making of laws, *which are to bind his Liberty and Property*, is a most transcendant thing and of an high nature. Lord RAYMOND's reports. 953.

fluence, elected by those, for whom they were made. Upon this principle is reasonably founded the maxim in law—That every one, who is capable of exercising his will, is party, and presumed to consent to an Act of Parliament.

For the same reason that persons, who live dependant upon the will of others, are not admitted to vote in elections, those who are under age, and therefore incapable of judging; those who are convicted of perjury or subornation of perjury, and therefore unworthy of judging; and, those who obtain their freeholds by fraudulent conveyances, and would therefore vote to serve infamous purposes, are all likewise excluded from the enjoyment of this great privilege. Corruption at elections is guarded against by the strictest precautions, and most severe penalties. Every elector, before he polls, must, if demanded by a candidate or by two electors, take the oath against bribery, as prescribed by 2. Geo. 2. c. 24. Officers of the excise, of the customs, and of the post-offices—Officers concerned in the duties upon leather, soap, paper, striped linens imported, hackney coaches, cards and dice, are restrained from interfering in elections under the penalty of £ 100 and of being incapable of ever exercising any office of trust under the King.

THUS is the freedom of elections secured from the *servility*, the *ignorance*, and the *corruption* of the electors; and from the interposition of officers depending immediately upon the Crown. But this is not all. Provisions, equally salutary, have been made concerning the qualifications of those, who shall be elected. All imaginable care has been taken, that the Commons of Great-Britain may be neither *awed*, nor *allured*, nor *deceived* into any nomination inconsistent with their liberties.

It has been adopted as a general maxim; that the Crown will take advantage of every opportunity of extending its prerogative in opposition to the privileges of the people; that it is the interest of those who have *pensions*, or *offices at will* from the  
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the Crown, to concur in all its measures; that mankind in general will prefer their private interest to the good of their country; and that, consequently, those who enjoy such pensions or offices are unfit to represent a free nation, and to have the care of their liberties committed to their hands. § All such officers or pensioners are declared incapable of being elected Members of the House of Commons.

BUT these are not the only checks which the Commons of Great Britain have upon the conduct of those, whom they elect to represent them in Parliament. The interest of the Representatives is the same with that of their constituents. Every measure, that is prejudicial to the nation, must be prejudicial to *them*, and their posterity. They cannot betray their electors, without, at the same time, injuring themselves. They must join in bearing the burthen of every oppressive act; and participate in the happy effects of every wise and good law. Influenced by these considerations, they will seriously and with attention examine every measure proposed to them; they will behold it in every light, and extend their views to its most distant consequences. If, after the most mature deliberation, they find it will be conducive to the welfare of their country, they will support it with ardour: If, on the contrary, it appears to be of a dangerous and destructive nature, they will oppose it with firmness.

EVERY social and generous affection concurs with their interest in animating the representatives of the Commons of Great Britain to an honest and faithful discharge of their important trust. In each patriotic effort, the heart-felt satisfaction of having acted a worthy part vibrates in delightful unison with the applause of their countrymen, who never fail to express their warmest acknowledgements to the friends and benefactors of their country. How pleasing are those rewards! How much to be preferred to that paltry wealth, which is sometimes procured by meanness and treachery! I say *sometimes*; for meanness and treachery do not always obtain even *that* pitiful reward. The most useful ministers to

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§ There are a few exceptions in the case of officers at will,

the crown, and therefore the most likely to be employed, especially in great emergencies, are those who are best beloved by the people ; and those only are beloved by the people, who act steadily and uniformly in support of their liberties. Patriots, therefore, have frequently, and especially upon important occasions, the best chance of being advanced to offices of profit and power. An abject compliance with the will of a imperious Prince, and a ready disposition to sacrifice every duty to his pleasure, are sometimes, I confess, the steps, by which only men can expect to rise to wealth and titles. Let us suppose, that in this manner, they are successful in attaining them. Is the despicable prize a sufficient recompence for submitting to the infamous means, by which it was procured ; and for the torturing remorse, with which the possession of it must be accompanied ? Will it compensate for the merited curses of the nation and of posterity ?

THESE must be very strong checks upon the conduct of every man, who is not utterly lost to all sense of praise and blame. Few will expose themselves to the *just* abhorrence of those, among whom they live ; and to the excruciating sensations, which such abhorrence must produce.

BUT lest all those motives, powerful as they are, should be insufficient to animate the representatives of the nation to a vigorous and upright discharge of their duty, and to restrain them from yielding to any temptation, that would incite them to betray their trust ; their constituents have still a farther security for their liberties in the frequent election of Parliaments. At the expiration of every Parliament, the people can make a distinction between those who have served them well, and those who have neglected or betrayed their interest : They can bestow, unasked, their suffrages upon the former in the new election ; and can mark the latter with disgrace, by a mortifying refusal. The constitution is thus frequently renewed and drawn back, as it were, to its first principles ; which is the most effectual method of perpetuating the liberties of a state. The people have numerous opportunities of displaying their just importance, and of exercising,

cising, in person, these natural rights. The representatives are reminded whose creatures they are; and to whom they are accountable for the use of that power, which is delegated unto them. The first maxims of jurisprudence are ever kept in view—THAT ALL POWER IS DERIVED FROM THE PEOPLE—THAT THEIR HAPPINESS IS THE END OF GOVERNMENT.

FREQUENT new Parliaments are a part of the British constitution: By them only the King can know the immediate sense of the nation. Every supply, which they grant, is justly to be considered as a testimony of the loyalty and affection, which the nation bear to their Sovereign; and by this means a mutual confidence is created between the King and his subjects. How pleasing must such an intercourse of benefits be! How must a father of his people rejoice in such dutiful returns for his paternal care! With what ardour must his people embrace every opportunity of giving such convincing proofs, that they are not insensible of his wise and indulgent rule!

LONG Parliaments have always been prejudicial to the Prince, who summoned them, or to the people, who elected them. In that called by King Charles I, in the year 1640, the Commons proceeded at first, with vigour and a true patriotic spirit, to rescue the kingdom from the oppression, under which it then groaned—to retrieve the liberties of the people, and establish them on the surest foundations—and to remove or prevent the pernicious consequences, which had arisen, or which, they dreaded, might arise from the tyrannical exercise of prerogative. They abolished the courts of the star chamber and high commission: They reduced the forfeits to their antient bounds: They repealed the oppressive statutes concerning knighthood: They declared the tax of ship-money to be illegal: They presented the petition of rights, and obtained a ratification of it from the crown. But when the King unadvisedly passed an Act to continue them till such time as they should please to dissolve themselves, how soon—how fatally did their conduct change! In what misery  
did



did they involve their country ! Those very men, who, while they had only a constitutional power, seemed to have no other aim but to secure and improve the liberty and felicity of their constituents ; and to render their Sovereign the glorious ruler of a free and happy people—those very men, after they became independant of the King and of their electors, sacrificed both to that inordinate power, which had been given them. A regard for the public was now no longer the spring of their actions : Their only view was to aggrandize themselves, and to establish their grandeur on the ruins of their country. Their views unhappily were accomplished. They over-turned the constitution from its very foundation ; and converted into rods of oppression those instruments of power, which had been put into their hands for the welfare of the state ; but which those, who had formerly given them, could not now re-assume. What an instructive example is this ! How alarming to those, who have no influence over their legislators—who have no security but that power, which was originally derived from the people, and was delegated for their preservation, may be abused for their destruction ! Kings are not the only tyrants : The conduct of the long Parliament will justify me in adding, that Kings are not the severest tyrants.

At the Restoration, care was taken to reduce the House of Commons to a proper dependance on the King ; but immediately after their election they lost all dependance upon their constituents, because they continued during the pleasure of the Crown. The effects soon dreadfully appeared in the long Parliament under Charles II. They seemed disposed ingloriously to surrender those liberties, for which their ancestors had planned, and fought and bled : And it was owing to the wisdom and integrity of \* two virtuous Ministers of the Crown, that the Commons of England were not reduced to a state of slavery and wretchedness by the treachery of their own representatives, whom they had indeed elected, but whom they could not remove. Secure of their seats, while they gratified the Crown, the Members bartered the liberties

\* The Earls of Clarendon and Southampton.

liberties of the nation for places and pensions ; and threw into the scale of prerogative all that weight, which they derived from the people, in order to counter-balance it.

It was not till some years after the Revolution, that the people could rely on the faithfulness of their Representatives, or punish their perfidy. By the Statute 6. W. and M. c. 2. it was enacted, that Parliaments should not continue longer than *three* years. The insecure situation of the first Prince of the *Hanoverian* line, surrounded with rivals and with enemies, induced the Parliament, soon after his accession to the throne, to prolong this term to that of *seven* years. Attempts have since that time been frequently made to reduce the continuance of Parliaments to the former term : And such attempts have always been well received by the nation. Undoubtedly they deserve such reception : For long Parliaments will naturally forget their dependance on the people : When this dependance is forgotten, they will become corrupt : “ Whenever they become corrupt, the Constitution of “ England will lose its liberty—it will perish.” §

SUCH is the provision made by the Laws of Great-Britain, that the Commons should be faithfully represented : Provision is also made, that faithful Representatives should not labour for their constituents in vain. The Constitution is formed in such a manner, that the House of Commons are *able* as well as *willing* to protect and defend the liberties entrusted to their care.

THE Constitution of Great-Britain is that of a limited monarchy ; and in all limited monarchies, the power of preserving the limitations must be placed somewhere. During the reigns

§ MONTESQ. b. II. c. 6.

If the legislative body were perpetual ; or might last for the life of the Prince who convened them, as formerly and were so to be supplied by occasionally filling the vacancies with new representatives ; in these cases, if it were once corrupted, the evil would be past remedy : But when different bodies succeed each other, if the people see cause to disapprove of the present, they may rectify its faults in the next. A legislative Assembly also, which is sure to be separated again, will think themselves bound in interest as well as duty to make only such laws as are good. BLACKSTONE 289.

reigns of the first Norman Princes, this power seems to have resided in the Clergy and in the Barons by turns. But it was lodged very improperly. The Clergy zealous only for the dignity and pre-eminence of the church, neglected and despised the people, whom, with the soil they tilled, they would willingly have considered as the patrimony of St. Peter. Attached to a foreign jurisdiction, and aspiring at an entire independance of the civil powers, they looked upon the prerogatives of the Crown as so many obstacles in the way of their favourite scheme of supreme ecclesiastical dominion; and therefore seized, with eagerness, every occasion of sacrificing the interests of their sovereign to those of the Pope. Enemies alike to their King and to their country, their sole and unvaried aim was to reduce both to the most abject state of submission and slavery. The means employed by them to accomplish their pernicious purposes were, sometimes, to work upon the superstition of the people, and direct it against the power of the Prince; and, at other times, to work upon the superstition of the Prince, and direct it against the liberties of the people.

THE power of preserving the limitations of monarchy for the purposes of liberty was not more properly placed in the Barons. Domineering and turbulent, they oppressed their vassals, and treated them as slaves; they opposed their Prince, and were impatient of every legal restraint. Capricious and inconstant, they sometimes abetted the King in his projects of tyranny; and, at other times, excited the people to insurrections and tumults. For these reasons, the Constitution was ever fluctuating from one extreme to another; Now despotism—now anarchy prevailed.

BUT after the representatives of the Commons began to sit in a separate House, to be considered as a distinct branch of the legislature; and as such, to be invested with separate and independant powers and privileges; then the constitution assumed a very different appearance. Having no interest contrary to that of the people, from among whom they were chosen, and with whom, after the session, they were again



to mix, they had no views inconsistent with the liberty of their constituents, and therefore could have no motives to betray it. Sensible that prerogative, or a discretionary power of acting where the laws are silent, is absolutely necessary, and that this prerogative is most properly entrusted to the executor of the laws, they did not oppose the exercise of it, while it was directed towards the accomplishment of its original end : But sensible likewise, that the good of the state was this original end, they resisted, with vigour, every arbitrary measure, repugnant to law, and unsupported by maxims of public freedom or utility.

THE checks, which they possessed over prerogative, were calm and gentle—operating with a secret, but effectual force—unlike the impetuous resistance of factious Barons, or the boisterous fulminations of ambitious Prelates.

ONE of the most ancient maxims of the English law is, That no freeman can be taxed at pleasure. \* But taxes on freemen were absolutely necessary to defray the extraordinary charges of government. The consent of the freemen was, therefore, of necessity to be obtained. Numerous as they were, they could not assemble to give their consent in their proper persons; and for this reason, it was directed by the constitution, that they should give it by their representatives chosen by and out of themselves. Hence the indisputable and peculiar privilege of the House of Commons to grant taxes. †

THIS is the source of that mild but powerful influence, which the commons of Great-Britain possess over the Crown. In this consists their security, that prerogative, intended for their benefit, will never be exerted for their ruin. By calmly and constitutionally refusing supplies, or by granting them only on certain conditions, they have corrected the extra-

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gancies

\* Bacon's Abridgment of the law, 568.

† Note, It is said in divers records, " per communitatem Angliæ probis concess." Because all grants of subsidies or aids by Parliament do begin in the House of Commons, and first granted by them : Also because in effect the whole profit which the King reapeth, doth come from the Commons.

4 Institute. 29.

gancies of some Princes, and have tempered the head-strong nature of others; they have checked the progress of arbitrary power, and have supported with honour to themselves, and with advantage to the nation, the character of grand inquisitors of the realm. The proudest Ministers of the proudest Monarchs have trembled at their censures; and have appeared at the bar of the House to give an account of their conduct, and ask pardon for their faults. Those Princes, who have favoured Liberty, and thrown themselves upon the affections of their people, have ever found that Liberty, which they favoured, and those affections which they cultivated, the firmest foundations of their throne, and the most solid support of their power. The purses of their people have been ever open to supply their exigencies: Their swords have been ever ready to vindicate their honour. On the contrary, those Princes, who, insensible to the glory and advantage of ruling a free people, have preferred to a willing obedience the abject submission of slaves, have ever experienced, that all endeavours to render themselves absolute were but so many steps to their own downfall.

SUCH is the admirable temperament of the British constitution! Such the glorious fabric of Britain's liberty—the pride of her citizens—the envy of her neighbours—planned by her legislators—erected by her patriots—maintained entire by numerous generations past! May it be maintained entire by numerous generations to come!

CAN the Americans, who are descended from British ancestors, and inherit *all* their rights, be blamed—can they be blamed BY THEIR BRETHREN IN BRITAIN—for claiming still to enjoy those rights? But can they enjoy them, if they are bound by the Acts of a British Parliament? Upon what principle does the British Parliament found their power? Is it founded upon the prerogative of the King? His prerogative does not extend to make laws to bind any of his subjects. Does it reside in the House of Lords? The Peers are a collective, and not a representative body. If it resides any where, then, it must reside in the House of Commons.

SHOULD

SHOULD any one object here, that it does not reside in the House of Commons *only*, because that House cannot make laws without the consent of the King and of the Lords; the answer is easy. Though the concurrence of all the branches of the Legislature is necessary to every law; yet the same laws bind different persons for different reasons, and on different principles. The King is bound, because he assented to them. The Lords are bound, because they voted for them. The Representatives of the Commons, for the same reason, bind themselves, and those whom they represent.

IF the Americans are bound neither by the assent of the King, nor by the votes of the Lords to obey Acts of the British Parliament, the *sole* reason, why they are bound, is, because the representatives of the Commons of Great-Britain have given their suffrages in favour of those Acts.\* But are the Representatives of the Commons of Great Britain the Representatives of the Americans? Are they elected by the Americans? Are they such as the Americans, if they had the power of election, would probably elect? Do they know the interest of the Americans? Does their own interest prompt them to pursue the interest of the Americans? If they do not pursue it, have the Americans power to punish them? Can the Americans remove unfaithful members at every new election? Can members, whom the Americans do not elect; with whom the Americans are not connected in interest; whom the Americans cannot remove; over whom the Americans have no influence.—Can such Members be styled, with any propriety, the magistrates of the Americans? Have those, who are bound by the laws of magistrates not their own, any security for the enjoyment of their absolute rights—those rights, “which every man is entitled to enjoy, whether in society or out of it?” || Is it probable that those rights will be maintained? Is it “the primary end of

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government

\* This is allowed even by the advocates for parliamentary power; who account for its extension over the Colonies upon the very absurd principle of their being *virtually* represented in the House of Commons.

|| Blackstone, 123.



government to maintain § them ?” Shall this primary end be *frustrated* by a political maxim intended to *promote* it ?

BUT from what source does this mighty, this uncontrouled authority of the House of Commons flow ? From the collective body of the Commons of Great-Britain. This authority must therefore originally reside in them : For whatever they convey to their representatives, must ultimately be in themselves. † And have those, whom we have hitherto been accustomed to consider as our fellow subjects, an absolute and unlimited power over us ? Have they a natural right to make laws, by which we may be deprived of our properties, of our liberties, of our lives ? By what title do they claim to be our masters ? What act of ours has rendered us subject to those, to whom we were formerly equal ? Is British Freedom denominated from the *soil*, or from the *People* of Britain ? If from the latter, do they lose it by quitting the soil ? Do those, who embark, freemen, in Great-Britain, disembark, slaves, in America ? Are those, who fled from the oppression of regal and ministerial tyranny, now reduced to a state of vassalage to those, who, then, equally felt the same oppression ? Whence proceeds this fatal change ? Is this the return made us for leaving our friends and our country—for braving the danger of the deep—for planting a wilderness, inhabited only by savage men and savage beasts—for extending the dominions of the British Crown—for encreasing the trade of the British merchants—for augmenting the rents of the British landlords—for heightening the wages of the British artificers ? Britons should blush to make such a claim : Americans would blush to own it.

It is not, however, the ignominy only, but the danger also, with which we are threatened, that afflicts us. The many and careful provisions which are made by the British Constitution, that the electors of members of Parliament may  
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§ Blackstone, 124.

† It is self-evident that the power, with relation to the part we bear in the legislation, is absolutely, is solely in the electors. We have no legislative authority but what we derive from them.

Debates of the Commons, vol. 6. p. 75.

be prevented from chusing Representatives, who would betray them; and that the Representatives may be prevented from betraying their constituents with impunity, sufficiently evince, that such precautions have been deemed absolutely necessary for securing and maintaining the system of British liberty.

How would the Commons of Great-Britain startle at a proposal. to deprive them of their share in the Legislature, by rendering the House of Commons independent of them! With what indignation would they hear it! What resentment would they feel and discover against the authors of it! Yet the Commons of Great-Britain would suffer less inconvenience from the execution of such a proposal, than the Americans will suffer from the extension of the legislative authority of Parliament over them.

THE Members of Parliament, their families, their friends, their posterity must be subject, as well as others, to the laws. Their interest, and that of their families, friends and posterity cannot be different from the interest of the rest of the nation. A regard to the former will, therefore, direct to such measures as must promote the latter. But is this the case with respect to America? Are the Legislators of Great-Britain subject to the laws which are made for the Colonies? Is their interest the same with that of the Colonies? If we consider it in a large and comprehensive view, we shall discern it to be undoubtedly the same; but few will take the trouble to consider it in that view; and of those who do, few will be influenced by the consideration. Mankind are usually more affected with a near though inferior interest, than with one, that is superior, but placed at a greater distance. As the conduct is regulated by the passions, it is not to be wondered at, if they secure the former by measures, which will forfeit the latter. Nay the latter will frequently be regarded in the same manner as if it were prejudicial to them. It is with regret that I produce some late regulations of Parliament as proofs of what I have advanced. We have experienced what an easy matter it is for a Minister, with an ordinary share of art,

art, to persuade the Parliament and the people, that taxes laid on the Colonies will ease the burdens of the Mother Country; which, if the matter is considered in a proper light, is, in fact, to persuade them, that the stream of national riches will be encreased by closing up the fountain, from which they flow.

As the Americans cannot avail themselves of that check, which interest puts upon the members of Parliament, and which would operate in favour of the Commons of Great-Britain, though they possessed no power over the Legislature; so the love of reputation, which is a powerful incitement to the Legislators to promote the welfare, and obtain the approbation, of those among whom they live, and whose praises or censures will reach and affect them, may have a contrary operation with regard to the Colonies. It may become popular and reputable at home to oppress us. A candidate may recommend himself at his election by recounting the many successful instances, in which he has sacrificed the interests of America to those of Great-Britain. A Member of the House of Commons may plume himself upon his ingenuity in inventing schemes to serve the Mother Country at the expence of the Colonies; and may boast of their impotent resentment against him on that account.

LET us pause here a little.—Does neither the love of gain, the love of praise nor the love of honour influence the members of the British Parliament in favour of the Americans? On what principles, then—on what motives of action can we depend for the security of our Liberties, of our Properties, of every thing dear to us in Life, of Life itself? Shall we depend on their veneration for the dictates of natural justice? A very little share of experience in the world; a very little degree of knowledge in the history of men will sufficiently convince us, that a regard for justice is by no means the ruling principle in human nature. He would discover himself to be a very sorry statesman, who would erect a system of jurisprudence upon that slender foundation. “He would make,” as my Lord Bacon says, “imaginary laws



laws for imaginary commonwealths ; and his discourses, like the stars, would give little light, because they are so high."

BUT this is not the worst that can justly be said concerning the situation of the Colonies, if they are bound by the Acts of the British legislature. So far are those powerful springs of action, which we have mentioned, from interesting the members of that legislature in our favour, that, as has been already observed, we have the greatest reason to dread their operation against us. While the happy Commons of Great-Britain congratulate themselves upon the Liberty, which they enjoy, and upon the provisions—infallible, as far as they can be rendered so by human wisdom—which are made for perpetuating it to their latest posterity ; the unhappy Americans have reason to bewail the dangerous situation, to which they are reduced ; and to look forward, with dismal apprehension, to those future scenes of woe, which, in all probability, will open upon their descendants.

WHAT has been already advanced, will suffice to shew, that it is repugnant to the essential maxims of jurisprudence, to the ultimate end of all governments, to the genius of the British constitution, and to the liberty and happiness of the Colonies, that they should be bound by the legislative authority of the Parliament of Great-Britain. Such a doctrine is not less repugnant to the voice of her laws. In order to evince this, I shall appeal to some authorities from the books of the law, which shew expressly, or by a necessary implication, that the Colonies are not bound by the Acts of the British Parliament ; because they have no share in the British legislature.

THE first case I shall mention was adjudged in the 2d year of Richard II. It was a solemn determination of all the Judges of England, met in the exchequer-chamber, to consider whether the people in Ireland were bound by an Act of Parliament made in England. They resolved, " That they were not, as to such things as were done in Ireland ; but that what they did out of Ireland, must be conformable to the

the laws of England, because they were the subjects of England. Ireland, said they, has a Parliament, who make laws; and our statutes do not bind them; BECAUSE THEY DO NOT SEND KNIGHTS TO PARLIAMENT: But their persons are the subjects of the King, in the same manner as the inhabitants of *Calais*, *Gascogne*, and *Guienne*." \*

THIS is the first case, which we find in the books upon this subject; and it deserves to be examined with the most minute attention.

1. It appears, that the matter under consideration was deemed, at that time, to be of the greatest importance: For ordinary causes are never adjourned into the Exchequer-Chamber; only such are adjourned there as are of uncommon weight, or of uncommon difficulty. "Into the Exchequer Chamber, says my Lord Coke, all cases of difficulty in the King's Bench, or Common Pleas, &c. are, and of antient time have been, adjourned, and there debated, argued, and resolved, by all the Judges of England and Barons of the Exchequer." † This Court proceeds with the greatest deliberation, and upon the most mature reflection. The case is first argued on both sides by learned Counsel; and then openly on several days, by all the Judges. Resolutions made with so much caution, and founded on so much legal knowledge, may be relied on as the surest evidences of what is law.

2. It is to be observed, that the extent of the legislative authority of Parliament is the very *point* of the adjudication. The decision was not incidental or indigested: It was not a sudden opinion, unsupported by reason and argument: It was an express and deliberate resolution of that very doubt, which they assembled to resolve.

3. It is very observable, that the reason, which those reverend sages of the law gave, why the people in Ireland were not bound by an Act of Parliament made in England, was the

\* 4. Modern Reports, 225. 7 Coke's Reports, 220. Calvin's Case.

† 4 Institute. 110.

the same with that, on which the Americans have founded their opposition to the late Statutes made concerning them. The Irish did not send Members to Parliament; and, therefore, they were not bound by its Acts. From hence it undeniably appears, that parliamentary authority is derived SOLELY from representation—that those, who are bound by Acts of Parliament, are bound for this ONLY reason, because they are represented in it. If it were not the ONLY reason, parliamentary authority might subsist independent of it. But as parliamentary authority fails wherever this reason does not operate, parliamentary authority can be founded on no other principle. The law never ceases, but when the reason of it ceases also.

4. It deserves to be remarked, that no exception is made of *any* Statutes, which bind those, who are not represented by the makers of them. The resolution of the Judges extends to *every* Statute: They say, without limitation—“our Statutes do not bind them.” And indeed the resolution ought to extend to every Statute; because the reason, on which it is founded, extends to every one. If a person is bound, ONLY because he is represented, it must certainly follow that wherever he is *not* represented he is *not* bound. No sound argument can be offered, why one Statute should be obligatory in such circumstances, and not another. If we cannot be deprived of our property by those, whom we do not commission for that purpose; can we, without any such commission, be deprived, by them, of our lives? Have those a right to imprison and gibbet us, who have not a right to tax us?

5. FROM this authority it follows, that it is by no means a rule, that the authority of Parliament extends to all the subjects of the Crown. The inhabitants of Ireland were the subjects of the King as of his crown of England; But it is expressly resolved, in the most solemn manner, that the inhabitants of Ireland are not bound by the Statutes of England. Allegiance to the King and obedience to the Parliament are founded on very different principles. The former



is founded on protection: The latter, on representation. An inattention to this difference has produced, I apprehend, much uncertainty and confusion in our ideas concerning the connexion, which ought to subsist between Great-Britain and the American Colonies.

6. THE last observation, which I shall make on this case, is, that, if the inhabitants of Ireland are not bound by Acts of Parliament made in England; *a fortiori*, the inhabitants of the American Colonies are not bound by them. There are marks of the subordination of Ireland to Great-Britain, which cannot be traced in the Colonies. A writ of error lies from the King's Bench ¶ in Ireland, to the King's Bench, and consequently to the House of Lords, in England; by which means the former kingdom is subject to the control of the Courts of Justice of the latter kingdom. But a writ of error does not lie in the King's Bench, nor before the House of Lords, in England, from the Colonies of America. The proceedings in their Courts of Justice can be reviewed and controled only on an appeal to the King in Council. §

THE foregoing important decision, favourable to the liberty of all the dominions of the British crown, that are not represented in the British Parliament, has been corroborated by subsequent adjudications. I shall mention one that was given in the King's Bench in the fifth year of King William and Queen Mary between *Blankard* and *Galdy*. †

THE plaintiff was Provost-Marshal of Jamaica, and, by articles, granted a deputation of that office to the defendant, under an yearly rent. The defendant gave his bond for the performance of the agreement; and an action of debt was brought upon that bond. In bar of the action, the defendant pleaded the Statute of 5. Ed. 6. made against buying and selling of offices that concern the administration of justice, and averred that this office concerned the administration of justice in Jamaica, and that, by virtue of that Statute, both the bond and articles were void. To this plea, the plaintiff

¶ 4. Institute 356.

§ BLACKSTONE 108. 231.

† SALKELD'S reports 411. 4, Modern reports 215.

plaintiff replied, that Jamaica was an island inhabited formerly by the Spaniards, " that it was conquered by the subjects of the kingdom of England, commissioned by legal " and sufficient authority for that purpose; and that since " that conquest its inhabitants were regulated and governed " by their own proper Laws and Statutes, and not by Acts " of Parliament or the Statutes of the kingdom of England." The defendant, in his rejoinder, admits that, before the conquest of Jamaica by the English, the inhabitants were governed by their own laws, but alleges that " since the conquest it was part of the kingdom of England, " and governed by the Laws and Statutes of the kingdom of England, and not by Laws and Statutes peculiar to the " island." To this rejoinder the plaintiff demurred, and the defendant joined in demurrer.

HERE was a cause to be determined judicially upon this single question in law—*Were the Acts of Parliament or Statutes of England in force in Jamaica?* It was argued on the opposite sides by Lawyers of the greatest eminence, before Lord Chief Justice Holt (a name renowned in the law!) and his brethren the Justices of the King's Bench. They unanimously gave judgment for the plaintiff; and, by that judgment, expressly determined—*That the Acts of Parliament or Statutes of England were not in force in Jamaica.* This decision is explicit in favour of America; for whatever was resolved concerning Jamaica is equally applicable to every American Colony.

SOME years after the adjudication of this case, another was determined in the King's Bench relating to Virginia; in which, Lord Chief Justice Holt held, that the laws of England did not extend to Virginia. §

I MUST not be so uncandid as to conceal, that in Calvin's case, where the abovementioned decision of the Judges in the Exchequer Chamber, concerning Ireland, is quoted, it is added, by way of explanation of that authority,—“ which is to be understood, unless it (Ireland) be especially named.”

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Nor will I conceal that the same exception \* is taken notice of, and seems to be allowed, by the Judges in the other cases relating to America. To any objection that may, hence, be formed against my doctrine, I answer, in the words of the very accurate Mr. Justice Foster, that " general rules thrown out in argument, and carried farther than the true state of the case then in judgment requireth, have, I confess, no great weight with me." †

THE question before the Judges in the cases I have reasoned from, was not how far the naming of persons in an Act of Parliament would affect them; though unless named, they would not be bound by it: The question was, whether the legislative authority of Parliament extended over the inhabitants of Ireland or Jamaica or Virginia. To the resolution of the latter question the resolution of the former was by no means necessary, and was, therefore, wholly impertinent to the point of the adjudication.

BUT farther; the reason assigned for the resolution of the latter question is solid and convincing: The American Colonies are not bound by the Acts of the British Parliament, because they are not represented in it. But what reason can be assigned why they should be bound by those Acts, in which they are specially named? Does naming them give those, who do them that honor, a right to rule over them? Is this the source of the supreme, the absolute, the irresistible, the uncontroled authority of Parliament? These positions are too absurd to be alledged; and a thousand judicial determinations in their favour would never induce one man of sense to subscribe his assent to them. ‡

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\* This exception does not seem to be taken in the case of II Richard 2, which ~~was~~ the foundation of all the subsequent cases.

† Foster's Crown Law, 313.

‡ Where a decision is manifestly absurd and unjust, such a sentence is *not law*. Blackstone, 70.

The legality of the opinion; " That the people in Ireland were bound by the statutes of England, when particularly named by them," seems afterwards to have been doubted of by Lord Coke himself, in another place of his works. After having mentioned the resolution in the Exchequer Chamber in the time of Richard II.



THE obligatory force of the British statutes upon the Colonies, when named in them, must be accounted for, by the advocates of that power, upon some other principle. In my Lord Coke's Reports, it is said, " That albeit Ireland be a distinct dominion, yet, *the title thereof being by conquest*, the same, by judgment of law, may be, by express words, bound by the Parliaments of England." In *this* instance, the obligatory authority of the Parliament is plainly referred to a *title by conquest*, as its foundation and original. In the instances relating to the Colonies this authority seems to be referred to the same source: For any one, who compares what is said of Ireland, and other conquered countries, in Calvin's case, with what is said of America, in the adjudications concerning it, will find that the Judges, in determining the latter, have grounded their opinions on the resolutions given in the former. || It is foreign to my purpose to enquire into the reasonableness of founding the authority of the British Parliament over Ireland upon the title of conquest though I believe it would be somewhat difficult to deduce it satisfactorily in this

IId. and having taken notice that question is made of it in some of the books, and particularly in Calvin's case, he says, " That the question concerning the binding force of English statutes over Ireland is now by common experience and opinion without any scruple resolved; That the Acts of Parliament, made in England, since the Act of the 10th H. 7, (he makes no exceptions) do not bind them in Ireland; but all Acts made in England before 10 H. 7, BY THE SAID ACT MADE IN IRELAND, AN. 10, H. 7, C. 22, do bind them in Ireland." 12 Report, 111.

|| It is plain that Blackstone understood the opinion of the Judges—that the Colonies are bound by Acts of the British Parliament, if named in them—to be founded on the principle of conquest. It will not be improper to insert his commentary upon the resolutions respecting America. " Besides these adjacent islands (Jersey, &c.) our more distant Plantations in America and elsewhere are also, in some respects, subject to the English laws. Plantations, or Colonies in distant countries, are either such where the lands are claimed in right of occupancy only, by finding them desert and uncultivated, and peopling them from the Mother-Country; or when already cultivated, they have been either gained by conquest, or ceded to us by treaties. Our American plantations are principally of this latter sort; being obtained in the last century, either by *right of conquest*, and driving out the natives (with what natural justice I shall not at present enquire) or by treaties.

Lord Chief Justice HOLT, in a case above-cited, calls Virginia a conquered country.

this manner. It will be sufficient for me to shew, that it is unreasonable, and injurious to the Colonies to extend that title to them. How come the Colonists to be a conquered people? By whom was the conquest over them obtained? By the House of Commons? By the constituents of that House? If the idea of conquest must be taken into consideration when we examine into the title by which America is held, that idea, so far as it can operate, will operate in favour of the Colonists, and not against them. Permitted and commissioned by the Crown, they undertook, at their own expence, expeditions to this distant country, took possession of it, planted it, and cultivated it. Secure under the protection of their King, they grew and multiplied, and diffused British freedom and British spirit, wherever they came. Happy in the enjoyment of liberty, and in reaping the fruits of their toils; but still more happy in the joyful prospect of transmitting their liberty and their fortunes to the latest posterity, they inculcated to their children the warmest sentiments of loyalty to their sovereign, under whose auspices they enjoyed so many blessings, and of affection and esteem for the inhabitants of the Mother Country, with whom they gloried in being intimately connected. Lessons of loyalty to Parliament indeed, they never gave: They never suspected that such unheard of loyalty would be required. They never suspected that their descendants would be considered and treated as a conquered people; and therefore they never taught them the submission and abject behaviour suited to that character.

I AM sufficiently aware of an objection, that will be made to what I have said concerning the legislative authority of the British Parliament. It will be alleged, that I throw off all dependance on Great-Britain. This objection will be held forth, in its most specious colours, by those, who, from servility of soul, or from mercenary considerations, would meanly bow their necks to every exertion of arbitrary power: It may likewise alarm some, who entertain the most favourable opinion of the connexion between Great-Britain and her Colonies;

Colonies; but who are not sufficiently acquainted with the nature of that connexion, which is so dear to them. Those of the first class, I hope, are few; I am sure they are contemptible, and deserve to have very little regard paid to them: But for the sake of those of the second class, who may be more numerous, and whose laudable principles atone for their mistakes, I shall take some pains to obviate the objection, and to shew that a denial of the legislative authority of the British Parliament over America is by no means inconsistent with that connexion, which ought to subsist between the Mother Country and her Colonies, and which, at the first settlement of those Colonies, it was intended to maintain between them: But that, on the contrary, that connexion would be intirely destroyed by the extension of the power of Parliament over the American plantations.

LET us examine what is meant by a *Dependance* on Great-Britain: For it is always of importance clearly to define the terms that we use. Blackstone, who, speaking of the Colonies, tells us, that “ they are no part of the Mother Country, but distinct (though *dependant*) dominions,” ¶ explains dependance in this manner. “ Dependance is very little else, but an obligation to conform to the will or law of that superior person or state, upon which the inferior depends.” “ The original and true ground of this superiority in the case of Ireland, is what we usually call, though somewhat improperly, the right of conquest; a right allowed by the law of nations, if not by that of nature; but which, in reason and civil policy, can mean nothing more, than that, in order to put an end to hostilities, a compact is either expressly or tacitly made between the conqueror and the conquered, that if they will acknowledge the victor for their master, he will treat them for the future as subjects, and not as enemies.” §

THE original and true ground of the superiority of Great-Britain over the American Colonies is not shewn in any book of the law, unless, as I have already observed, it be derived from

¶ Blackstone, 107.

§ Ibid. 103.



from the right of conquest. But I have proved, and I hope satisfactorily, that this right is altogether inapplicable to the Colonists. The original of the superiority of Great-Britain over the Colonies is, then, unaccounted for ; and when we consider the ingenuity and pains which have lately been employed at home on this subject, we may justly conclude, that the only reason why it *is* not accounted for, is, that it *cannot* be accounted for. The superiority of Great-Britain over the Colonies ought, therefore, to be rejected ; and the dependence of the Colonies on her, if it is to be construed into “ an obligation to conform to the will or law of the superior state,” ought, in *this* sense, to be rejected also.

My sentiments concerning this matter are not so singular. They coincide with the declarations and remonstrances of the Colonies against the statutes imposing taxes on them. It was their unanimous opinion, that the Parliament have no *right* to exact obedience to those statutes ; and, consequently, that the Colonies are under no *obligation* to obey them. The dependence of the Colonies on Great-Britain was denied in those instances ; but a denial of it in those instances is, in effect, a denial of it in all other instances. For, if dependence is an obligation to conform to the will or law of the superior state ; any exceptions to that obligation must destroy the dependence. If, therefore, by a dependence of the Colonies on Great-Britain, it is meant, that they are obliged to obey the laws of Great-Britain, reason, as well as the unanimous voice of the Americans, teaches us to disown it. Such a dependence was never thought of by those who left Britain, in order to settle in America ; nor by their Sovereigns, who gave them commissions for that purpose. Such an *obligation* has no correspondent *right* : For the Commons of Great-Britain have no dominion over their equals and fellow subjects in America : They can confer no right to their delegates to bind those equals and fellow subjects by laws.

THERE is another, and a much more reasonable meaning, which may be intended by the dependence of the Colonies on Great-Britain. The phrase may be used to denote the obedience

obedience and loyalty, which the Colonists owe to the *Kings* of Great-Britain. If it should be alledged, that this cannot be the meaning of the expression, because it is applied to the *kingdom*, and not to the *King*, I give the same answer that my Lord Bacon gave to those, who said that allegiance related to the *kingdom* and not to the *King*; because in the statutes there are these words: "born within the allegiance of *England*," and again, "born without the allegiance of *England*." "There is no trope of speech more familiar, says he, than to use the *place* of addition for the *person*. So we say commonly, the line of York, or the line of Lancaster, for the lines of the Duke of York, or the Duke of Lancaster. So we say the possessions of Somerset or Warwick, intending the possessions of the Dukes of Somerset, or Earls of Warwick. And in the very same manner, the statute speaks, allegiance of England, for allegiance of the King of England." \*

DEPENDENCE of the Mother Country seems to have been understood in this sense, both by the first planters of the Colonies, and also by the most eminent Lawyers, at that time, in England.

THOSE who launched into the unknown deep, in quest of new countries and habitations, still considered themselves as subjects of the English Monarchs, and behaved suitably to that character; but it no where appears, that they still considered themselves as represented in an English Parliament, or that they thought the authority of the English Parliament extended over them. They took possession of the country in the *King's* name: They treated, or made war with the Indians by *his* authority: They held the lands under *his* grants, and paid *him* the rents reserved upon them: They established governments under the sanction of *his* prerogative, or by virtue of his charters. No application for those purposes was made to the Parliament: No ratification of

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\* Bacon's argument in the case of the postnati of Scotland.

the charters or letters patent was solicited from that Assembly, as is usual in England with regard to grants and franchises of much less importance.

My Lord Bacon's sentiments on this subject ought to have great weight with us. His immense genius, his universal learning, his deep insight into the laws and constitution of England are well known and much admired. Besides, he lived at that time when settling and improving the American Plantations began seriously to be attended to, and successfully to be carried into execution. § Plans for the government and regulation of the Colonies were then forming; and it is only from the first general idea of these plans that we can unfold, with precision and accuracy, all the more minute and intricate parts, of which they now consist. "The settlement of Colonies, says he, must proceed from the option of those, who will settle them, else it sounds like an exile: They must be raised by the *leave*, and not by the *command* of the *King*. At their setting out, they must have their commission, or letters patents from the *King*, that so they may acknowledge their DEPENDENCY UPON THE CROWN of England, and under his protection." In another place he says, "that they still must be *subjects* of the realm." † "In order to regulate all the inconveniencies, which will insensibly grow upon them," he proposes, "that the King should erect a subordinate council in England, whose care and charge shall be, to advise, and put in execution, all things which shall be found fit for the good of those new Plantations; who, upon all occasions, shall give an account of their proceedings to the *King* or to the *Council-Board*, and from THEM receive such directions, as may best agree

§ During the reign of Queen Elizabeth, America was chiefly valued on account of its mines. It was not till the reign of James I. that any vigorous attempts were made to clear and improve the soil.

† The Parliament have no subjects. My Lord Bacon gives in this expression, an instance of the trope of speech beforementioned. He says, the subjects of the *realm*, when he means the subjects of the *King* of the realm.



agree with the government of that place." † It is evident, from these quotations, that my Lord Bacon had no conception, that the Parliament *would* or *ought* to interpose † either in the settlement or the government of the Colonies. The only relation, in which he says, the Colonists must still continue, is that of subjects: The only dependency, which they ought to acknowledge, is a dependency on the Crown.

THIS is a dependence, which they have acknowledged hitherto; which they acknowledge now; and which, if it is reasonable to judge of the future by the past and the present, they will continue to acknowledge hereafter. It is not a dependence, like that contended for on Parliament, slavish and unaccountable, or accounted for only by principles, that are false and inapplicable: It is a dependence founded upon the principles of reason, of liberty, and of law. Let us investigate its sources.

THE Colonists ought to be dependent on the King, because they have hitherto enjoyed, and still continue to enjoy his protection. Allegiance is the faith and obedience, which every subject owes to his Prince. This obedience is founded on the protection derived from government: For protection and allegiance are the reciprocal bonds, which connect the Prince and his subjects. ¶ Every subject, so soon as he is born, is under the royal protection, and is entitled to all the advantages arising from it. He therefore, owes obedience to that royal power, from which the protection, which he enjoys, is derived. But while he continues in infancy and non-age, he cannot perform the duties which his allegiance requires. The performance of them must be

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† 1. Bacon's works, 725, 726.

† It was chiefly during the confusions of the republic, when the King was in exile, and unable to assert his rights, that the House of Commons began to interfere in Colony matters.

¶ Between the Sovereign and subject there is duplex et recipro- cum ligamen; quia sicut subditus Regi tenetur ad obedientiam; ita Rex subdito tenetur ad protectionem: Merito igitur ligantia dicitur a ligando, quia continet in se duplex legamen.

7 Report. 52. CALVIN'S Case.

respite till he arrive at the years of discretion and maturity. When he arrives at those years, he owes obedience, not only for the protection, which he now enjoys; but also for that, which, from his birth, he has enjoyed; and to which his tender age has hitherto prevented him from making a suitable return. Allegiance now becomes a duty founded upon principles of gratitude, as well as on principles of interest: It becomes a debt, which nothing but the loyalty of a whole life will discharge. § As neither climate, nor soil, nor time entitle a person to the benefits of a subject; so an alteration of climate or of soil or of time cannot release him from the duties of one. An Englishman, who removes to foreign countries, however distant from England, owes the same allegiance to his King there which he owed to him at home; and will owe it twenty years hence as much as he owes it now. Wherever he is, he is still liable to the punishment annexed by law to crimes against his allegiance; and still entitled to the advantages promised by law to the duties of it: It is not *cancelled*; and it is not *forfeited*. “Hence all children born “in any parts of the world, if they be of English parents “continuing at that time as liege subjects to the King, and “having done no act to forfeit the benefit of their allegiance, “are ipso facto naturalized: And if they have issue and their “descendants intermarry among themselves, such descendants are naturalized to all generations.” ||

Thus we see, that the subjects of the King, though they reside in foreign countries, still owe the duties of allegiance, and are still entitled to the advantages of it. They transmit  
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§ The King is protector of all his subjects: In virtue of this high trust, he is more particularly to take care of those who are not able to take care of themselves, consequently of infants, who, by reason of their nonage, are under incapacities; from hence natural allegiance arises, as a debt of gratitude, which can never be cancelled, though the subject owing it goes out of the kingdom, or swears allegiance to another Prince. 2. WILLIAM'S Reports, 123, 124.

|| BACON'S Argument in the case of postnati of Scotland.

to their posterity the privilege of naturalization, and all the other privileges which are the consequences of it. †

Now we have explained the dependence of the Americans. They are the subjects of the King of Great-Britain. They owe him allegiance. They have a right to the benefits which arise from preserving that allegiance inviolate. They are liable to the punishments which await those who break it. This is a dependence, which they have always boasted of. The principles of loyalty are deeply rooted in their hearts; and there they will grow and bring forth fruit, while a drop of vital blood remains to nourish them. Their history is not stained with rebellions, and treasonable machinations: An inviolable attachment to their sovereign, and the warmest zeal for his glory shine in every page.

From this dependence, abstracted from every other source, arises a strict connection between the inhabitants of Great-Britain and those of America. They are fellow subjects; they are under allegiance to the same Prince; and this union of allegiance naturally produces an union of hearts. It is also productive of an union of measures through the whole British dominion. To the King is entrusted the direction and management of the great machine of government. He therefore is fittest to adjust the different wheels, and to regulate their motions in such a manner as to co-operate in the same general designs. He makes war: He concludes peace: He forms alliances: He regulates domestic trade by his prerogative; and directs foreign commerce by his treaties, with those nations, with whom it is carried on. He names the officers of government; so that he can check every jarring movement in the administration. He has a negative in the different legislatures throughout his dominions, so that he can prevent any repugnancy in their different laws.

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† Natural born subjects have a great variety of rights, which they acquire by being born in the King's legiance, and can never forfeit by any distance of place or time, but only by their own misbehaviour; the explanation of which rights is the principal subject of the law. BLACKSTONE. 371.



THE connection and harmony between Great-Britain and us, which it is her interest and ours mutually to cultivate; and on which her prosperity, as well as ours, so materially depends; will be better preserved by the operation of the legal prerogatives of the Crown, than by the exertion of an unlimited authority by Parliament. \*

\* After considering, with all the attention of which I am capable, the foregoing opinion,—*That all the different Members of the British Empire are DISTINCT STATES, INDEPENDANT OF EACH OTHER, BUT CONNECTED TOGETHER UNDER THE SAME SOVEREIGN IN RIGHT OF THE SAME CROWN*—I discover only one objection that can be offered against it. But this objection will, by many, be deemed a fatal one. “How, it will be urged, can the Trade of the British Empire be carried on, without some power, extending over the whole, to regulate it? The legislative authority of each part, according to your doctrine, is confined within the local bounds of that part: How, then, can so many interfering interests and claims, as must necessarily meet and contend in the commerce of the whole, be decided and adjusted?”

Permit me to answer these Questions by proposing some others in my turn. How has the Trade of Europe—How has the Trade of the whole Globe, been carried on? Have those widely-extended plans been formed by one superintending power? Have they been carried into execution by one superintending power? Have they been formed—have they been carried into execution, with less conformity to the rules of justice and equality, than if they had been under the direction of one superintending power?

It has been the opinion of some Politicians, of no inferior note, that all regulations of Trade are useless; that the greatest part of them are hurtful; and that the stream of Commerce never flows with so much beauty and advantage, as when it is not diverted from its natural channels. Whether this opinion is well founded or not, let others determine. Thus much may certainly be said, that Commerce is not so properly the object of Laws, as of Treaties and Compacts. In this manner, it has been always directed among the several nations of Europe.

But if the Commerce of the British Empire must be regulated by a general superintending power, capable of exerting its influence over every part of it, why may not this power be entrusted to the King, as a part of the Royal prerogative? By making Treaties, which it is his prerogative to make, he directs the Trade of Great-Britain with the other States of Europe: And his Treaties with those States have, when considered with regard to his subjects, all the binding force of Laws upon them.† Where is the absurdity in supposing

† *The King may make a treaty with a foreign State, which shall irrevocably bind the nation.* BLACKSTONE, 252.

supposing him vested with the same right to regulate the Commerce of the distinct parts of his dominions with one another, which he has to regulate their Commerce with foreign States. If the history of the British Constitution, relating to this subject, be carefully traced, I apprehend we shall discover, that a prerogative in the Crown, to regulate Trade, is perfectly consistent with the principles of law. We find many authorities that the King cannot lay impositions on Traffic; and that he cannot restrain it *ALTOGETHER*, nor confine it to *Monopolists*: But none of the authorities, that I have had an opportunity of consulting, go any farther. Indeed many of them seem to imply a power in the Crown to regulate Trade; where that power is exerted for the great end of all prerogative—the public good.

If the power of regulating Trade be, as I am apt to believe it to be, vested, by the principles of the constitution, in the Crown, this good effect will flow from the doctrine: A perpetual distinction will be kept up between that power, and a power of laying impositions on Trade. The prerogative will extend to the former: It can, under no pretence, extend to the latter: As it is *given*, so it is *limited*, by the Law.

T H E E N D.

